IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.128 OF 2005
IN
SUMMARY SUIT NO.484 OF 2004

Silvai Anthony ....Plaintiff
V/s.
M/s.Ami Exports & Anr. ....Defendants

Mr.J.S. Kini for the Plaintiff.
Ms.Mamta Sadh Daru Shah & Co. for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 22ND NOVEMBER, 2005.

P.C. :

1. The suit is filed to recover balance price of the goods sold and delivered by the Plaintiff to the Defendants. Admittedly the goods were sold and delivered pursuant to the purchase order placed by the Defendants on the Plaintiff. Admittedly, pursuant to the purchase order, the goods were in fact sold and delivered on the terms and conditions contained in the invoice Exhibit "B" to the plaint. Admittedly again the goods were received by the Defendants as evidenced by the delivery challan Exhibit "C" to the plaint. Finally it is also admitted that the balance amount claimed in the suit remains to be paid.

2. The only defence to the suit is that the goods were defective. This assertion is not even made by the Defendants. The Defendants have merely reiterated this allegation made by the Defendants' purchaser in Sri Lanka. The Defendants state that they trusted the Plaintiff to supply the goods of the requisite quality and therefore did not inspect the same themselves. Another reason for not inspecting the goods themselves is that the supply thereof was delayed. Under the purchaser order, the delivery of the goods was to be supplied by 20th February, 2003. It is alleged that the earlier consignment did not conform to the requisite quality.

3. Be that as it may, clause 1 of the invoice clearly states that no claim for shortage, damage, breakage, leakage etc. will be entertained after the goods leave the Plaintiff's premises. The goods admittedly left the Plaintiff premises pursuant to the instructions of the Defendants. By doing so, the Defendants have in fact deprived the Plaintiff an opportunity of establishing the quality of he goods.

4. Some of the correspondence annexed to the affidavit in reply is denied by the Plaintiff. Even assuming that the correspondence was forwarded to the

Plaintiff, it does not carry the Defendants' case further. In this regard it is pertinent to note that in a letter dated 14th November, 2003, the Defendants stated to the police authorities that they had requested the Plaintiff to either replace the goods or take back the material by paying the dues and other charges that their buyer had paid and to return the part payment made by the Defendants. Thus the rejection was also not absolute. It was conditional upon the Plaintiff paying the amounts claimed by the Defendants' purchaser.

5. In the circumstances, there is no defence to the suit.

6. In the circumstances, the Summons for Judgment is made absolute and the suit is decreed as prayed with costs. However,interest after the date of the suit shall be at the rate of 12% p.a. on the principal amount of Rs.1,45,950/-.

. Refund as per rules.